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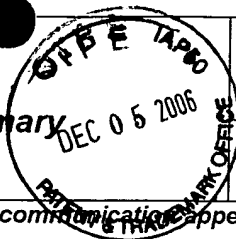
APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/458,280	12/10/1999	RICHARD C. VOGEL	VAC.331A	8678
30159	7590	11/24/2003		
ATTN: LEGAL-MANUFACTURING KINETIC CONCEPTS, INC. P.O. BOX 659508 SAN ANTONIO, TX 78265-9508				
			EXAMINER DEMILLE, DANTON D	
			ART UNIT 3764	PAPER NUMBER

DATE MAILED: 11/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

received
12-1-03

VAC.331A
1-24-04-2nd
DOCKET DATE: 2-24-04-3rd
DOCKET FOR: FINAL OA &
DOCKET BY: [Signature] Notice of Appeal

Office Action Summary

Application No.

09/458,280

Applicant(s)

VOGEL ET AL.

Examiner

Danton DeMille

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

Claims 1-5, 10-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jacobs et al. in view of Argenta et al. and Dye.

As noted previously, Jacobs teaches an inflatable foot wrap for applying compressive force over the lower leg and foot of the patient.

Jacobs also teaches that the foot wrap can be used in combination with a wound dressing column 6, lines 4-7. In order to complete the teaching of Jacobs one needs to find a conventional wound dressing. Argenta teaches a conventional wound dressing that uses a porous foam pad 10 positioned within the ulcer, a drape 12 for covering and sealing the ulcer and fluid communication means 11, 15.

Jacobs appears silent with regard to exactly what is used to inflate the inflatable wrap. Jacobs teaches that the interface pressure may be regulated by the amount it is inflated but doesn't disclose how this is done. Dye teaches a conventional pump, reservoir and valves in which to supply pressure to inflation bladders. Dye teaches that the valves are closed while the compressor 32 charges the accumulator 30 with pressurized gas. Next the valve is opened to permit passage of pressurized fluid from the accumulator 30 into the ankle chamber, column 3, lines 28-39.

It would have been obvious to one of ordinary skill in the art to modify Jacobs to use a conventional wound dressing such as taught by Argenta in combination with the foot wrap as suggested by Jacobs and to use automatic positive pressure source as taught by Dye to

automatically regulate the pressure within the inflatable foot wrap. It appears that applicant has merely taken individual conventional elements and stuck them together.

Claims 6, 8, 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of Tumey et al. 5,443,440. If one wishes to apply continuous pressure or intermittent pressure a controller and processor would have been an obvious provision. Tumey teaches a controller 44 and processor 70 for controlling the operation of the inflation. It would have been obvious to one of ordinary skill in the art to further modify Jacobs to provide a controller and processor as taught by Tumey to better control the operation of the device.

Claim 7 rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 6 above, and further in view of Khouri. Tumey already teaches a pressure sensor 47 for regulating the inflation pressure. Regulating pressures of any kind whether it be positive or negative would be well within the realm of the artisan of ordinary skill. However, Khouri is additionally cited to teach the convention of a pressure sensor 24 in the vacuum environment and wound dressing figure 6. It would have been obvious to one of ordinary skill in the art to further modify Jacobs to include a pressure sensor as taught by Khouri to maintain proper pressure within the application site.

Claims 1-6, 8-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jacobs et al. in view of Argenta et al. and Tumey et al. 5,840,049.

Tumey '049 alternatively teaches the compressor and reservoir system for maintaining pressure within the bladders. It would have been obvious to one of ordinary skill in the art to modify Jacobs to use a conventional vacuum wound dressing as taught by Argenta in

combination with the foot wrap as suggested by Jacobs and to use a positive pressure source including a compressor, reservoir and controller as taught by Tumey to better control the positive pressure application.

Claim 7 rejected under 35 U.S.C. 103(a) as being unpatentable over Jacobs et al., Argenta et al. and Tumey et al. '049 as applied to claim 6 above, and further in view of Khouri. Tumey already teaches a pressure sensor 47 for regulating the inflation pressure. Regulating pressures of any kind whether it be positive or negative would be well within the realm of the artisan of ordinary skill. However, Khouri is additionally cited to teach the convention of a pressure sensor 24 in the vacuum environment and wound dressing figure 6. It would have been obvious to one of ordinary skill in the art to further modify Jacobs to include a pressure sensor as taught by Khouri to maintain proper pressure within the application site.

Double Patenting

Claims 1-6, 8-17 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-8 of U.S. Patent No. 5,840,049 in view of Argenta et al. and Jacobs et al. Tumey teaches an inflatable foot wrap with a compressor and reservoir as claimed and adding a wound dressing such as taught by Argenta would have been an obvious provision if the injury to the leg requires a wound dressing. Jacobs is additionally cited to teach that the combination of inflatable foot wrap and wound dressing is old. It would have been obvious to one of ordinary skill in the art to modify Tumey to include a vacuum wound dressing as taught by Argenta if the patent so requires and as further suggested by Jacobs.

Claim 7 is rejected under the judicially created doctrine of obviousness-type double

patenting as being unpatentable over claims 1-8 of U.S. Patent No. 5,840,049 as set forth above and further in view of Khouri. Tumey already teaches a pressure sensor 47 for regulating the inflation pressure. Regulating pressures of any kind whether it be positive or negative would be well within the realm of the artisan of ordinary skill. However, Khouri is additionally cited to teach the convention of a pressure sensor 24 in the vacuum environment and wound dressing figure 6. It would have been obvious to one of ordinary skill in the art to further modify Tumey to include a vacuum pressure sensor as taught by Khouri to maintain proper pressure within the application site.

Response to Arguments

Applicant's arguments with respect to claims 1-17 have been considered but are moot in view of the new ground(s) of rejection.

It is felt that the claims merely recite a combination of conventional elements. The inflatable foot wrap is not new. The vacuum wound dressing is not new. Even the newly claimed compressor and reservoir is not new. Applicant appears to be combining old elements together for a specific intended use. There is no unobviousness to combine these elements together since the prior art even suggests it.

Conclusion


Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO**

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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

ddd
20 November, 2003
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Primary Examiner
Art Unit 3764